80-1722

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

VICTOR SHARROW, Pro-Se, Petitioner

vs.

ELIZABETH HOLTZMAN, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

VICTOR SHARROW, Pro-Se, Petitioner
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ELIZABETH HOLTZMAN, Respondent
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QUESTION PRESENTED

Can a "she" be elected a United States Senator? - despite the Constitutional COMMAND, of the four part requirement of Article I, Section 3, , Clause 3 male gendered requirement, "of that state for which HE shall be chosen.", which are the identical words "of that state for which HE shall be chosen;" for Representatives, under Article I, Section 2, Clause 2, since Elizabeth Holtzman had been a Representative before, as Senators and Representatives are repeatedly joined together several times in the Constitution, as a "HE", as in Article I, Section 6, Clause 2, "No Senator or representative shall, during the time for which HE was elected...", and not once does the Constitution refer to females at all, while referring to males 27 times, for a 27 to 0 male oriented Constitutional document.

PARTIES

The parties to this case are VICTOR SHARROW, Pro-Se Petitioner, and ELIZABETH HOLTZMAN, Respondent, who as a Representative had been sued on the same grounds of not being a "HE", 79 U.S. 2005, Certiorari denied, 10/6/80, while also questioning the unconstitutionality of Apportionment, since Section 2 of the 14th Amendment was not enforced in the constitutional computation of apportionment as COMMANDED by the Constitution of the United States, should be revived and heard for the first time when certiorari is granted in this suit, between the same two litigants, SHARROW V HOLTZMAN, because in the Second Circuit Court of Appeals in this suit, the private Attornies for Holtzman, included District Court Judge Platt's prior apportionment suit decision, that still denies me my constitutional right to vote for my constitutional apportionment of Representatives and therefore

Presidential Electors too under Article II, Section 1, Clause 2, that should have resulted in a default judgement in the District Court because the House of Representative Attornies illegally represented Holtzman in her Representative suit, who never appeared at any court level and never wrote a reply in the Supreme Court which makes one wonder what all this talk about adversary proceedings is really all about.

Bess Myerson, named in the courts below pulled out of the suit when she lost the 1980 Democratic Party Primary to Elizabeth Holtzman, which like Secretary of State Haig's TV misstatement of Presidential succession, after President Reagan was shot, makes one wonder, whether anyone, Meyerson, Haig or the Courts care to adjudicate simple constitutional questions like Federal apportionment or is a "she" a constitutional "he unless the Equal Rights Amendment is ratified.

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

VICTOR SHARROW, Pro-Se, Petitioner

vs.

ELIZABETH HOLTZMAN, Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

The Petitioner, VICTOR SHARROW, respectfully prays that a Writ of Certiorari should be issued to review the erroneous judgement and opinion of the United States Court of Appeals for the Second Circuit that cites irrelevant, outmoded cases that has no validity to counter-COMMAND the Constitution of the Uniteds States, except through an Article V Amendment process, which the Equal Rights Amendment is trying to do to rectify the male

gendered, 27 to 0 Constitution of the United States, for running for or holding the three federally elective offices of Representative, Senator, President, and/or Vice President.

OPINION BELOW

The opinion of the Court of Appeals, appearing in the Appendix, in a most peculiar form, "N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.", is from the Second Circuit Court of Appeals, 80 Civ. 7731, SHARROW v HOLTZMAN, dated December 29, 1980, that has 90 days to appeal, plus the 21 added by United States Supreme Court Clerk, for my previously filed erroneous form briefs, makes this March 14th brief timely.

STATUTES AND REGULATIONS AND JURISDICTION

This case derives directly out of the aforementioned Constitutional Article I, Section 3, Clause 3, mandatory command that a candidate for United States Senator must be a "HE", unchanged by the 125 year later 17th Amendment Direct Election of Senators, that refers back to the original Article I, Section 2, Clause 2, discrimination against women voters, without saying so, in the words,

> "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

This case derives directly out of the Constitution, just like the 1971 BIVENS, 403 U.S. 388 case and the more appropriate more updated Justice Brennan June 5, 1979, opinion 78 U.S. 5072, in SHIRLEY DAVIS v. former Louisiana Congressman OTTO E. PASSMAN, another "she" v "he" case, that had no stautory derivation, as well as the June 16, 1969, 305 U.S. 486 case of ADAM CLAYTON

POWELL v HOUSE SPEAKER JOHN McCORMACK, which also derived directly out of the constitution as to who can sit in Congress, in that case and in my previous Elizabeth Holtzman case in the House of Representatives

This case also actually derives out of the Judiciary Article III, Section 2, that states,

> "The judicial power shall extend to ALL cases, in law and equity, arising under this constitution..."

and this case arises under this constitution.

Jurisdiction is also conferred by Section 1254 of Title 58, U.S. Code, and Rule 17, of the United States Supreme Court, page 17, "Considerations Governing Review on Certiorari", that used to state under the old Rule 23, to decide constitutional issues never raised before, that should be settled by the Supreme Court as the Court of Last Resort, as to the qualifications for running for or being elected to Congress, as in

my previous and present Holtzman cases, like the ADAM CLAYTON POWELL case was decided before, and correctly too, under the Constitutional requirement COMMANDS which is all that this case is calling for also.

STATEMENT OF THE CASE

I brought a Show Cause Order before New York Southern District Judge Robert Ward to enjoin Elizabeth Holtman and Bess Myerson from running in the Democratic Party 1980 Senatorial Primary, because a "she" can not run for or hold a seat, the Constitution commands must be held by a "he" as indeed it was for more than the 125 years after the Direct Election of Senators under the 17th Amendment.

District Judge Ward granted the Show Cause Order, but denied the Injunction to stop the Democratic Primary unless I could put up $50,000.00 which is outrageous

especially in view of the fact that the Three Judge Philadelphia, Pennsylvania Court convened under the old three Judge Court rule that held that the military discriminatory draft act did not include women as well as men, that Justice Brennan, invalidated, that was argued in the Supreme Court a few weeks ago in another "she" v. "he" case" did not require any such outrageous request for money before issuing an injunction.

District Judge Ward, and the Court of Appeals for the Second Circuit who heard the case, with Circuit Judge James L. Oakes sitting in on both my first and second Holtzman cases, missed the simple points in both cases, as you can read, even citing the Breedlove v Suttles case, 302 U.S. 277, (1937) cited by District Judge Platt in my first "she" v "he" Representative and Apportionment case, that should be revived when this case is granted certiorari, which Breedlove case had nothing to do with she"

v. "he" issue and was on my side for invoking the denial or abridgement provision of Section 2 of the 14th Amendment for Apportionment, because the Breedlove case from Georgia, dealt with the vicious cumulative payment of past poll taxes abridgement of the right to vote, that was outlawed by the 24th anti-poll tax Amendment, after the erroneous 1937 Supreme Court case, that seems to be the height of "chutzpah" to cite in 1980, as being valid constitutional case law.

Elizabeth Holtzman won the 1980 Democratic Party Primary, and was beaten by Republican Senator D'Amato in the November elections - because defeated Senator Jacob Javits stayed in the three cornered race.

Bess Myerson pulled out of the case, voluntarily when she lost the Primary to Elizabeth Holtzman. Why should she care to settle a valid constitutional issue raised?

This case is not moot, as Circuit Judge James L. Oakes wrote,

> "However, we will assume that this controversy is not moot, for it is one 'capable of repetition, yet evading review.'" (see Justice Stewart Potter's Gannettv DePasquale same theory)

which evasion of review with that peculiar "headnote?" is what Judge Oakes did, and did not even mention at all in my first Holtzman decision in which he also sat, which makes one wonder whether judges listen or read, even when stated and written as forcefully as I do. Reread, Oakes' first decision that the Supreme Court has, There is not one word regarding the "she" vs "he" issue that I likewise raised in my previous 1980 Sharrow v Holtzman suit, that the Supreme Court should revive and review under the Court's supervisory rule of riding herd on the lower courts' miscarriage of Justice, and continued miscarriage of UNconstitutional election of women that is UNconstitutional unless the Equal Rights Amendment is ratified, under Elizabeth Holtzman's sponsored of extension of time for ratification of the E.R.A.

This case is not moot. Holtzman will most likely run again. Bella Abzug, a "she" lost her Democratic Primary bid by one tenth of onepercent to Senior N.Y. Senator Patrick Moynihan. Alf Landon's daughter Nancy Kassabaum, won in Kansas two years ago, and in the last 1980 election Ms. Hawkins was elected a U.S. Senator from Florida, the last two elected on their own unlike Senator Margret Chase Smith of Maine and Muriel Humphrey, being appointed after Humphrey died. This case is not moot.

This case is as justiciable as Powell v McCormack, in which neither of the litigants can get hurt, since Holtzman already lost.

Stearns v VFW253 F. Supp 473 (D.D.C. 1972) cited by Circuit Judge Oakes is a "she" v "he" case, that Oakes maybe did not even read, because it says that a "she" can not join an organization reserved for "hes , making that case another case, that is on my side showing gender prejudice.

On Monday, March 23, 1980 the Supreme Court after granting certiorari, which should happen in this case too, heard oral argument in County of Washington v Gunther, from Hillsboro Oregon, under Title VII, of the Civil Rights Act of 1964, (written after my first suit) concerning equal pay for women, in which women jail matrons are paid $200 a month less than deputy sheriffs who guard male prisoners.

Senator Mark Hatfield of Oregon has introduced legislation to equalize male and female pay, especially in Congress, where the female discrimination, exempted from federal laws are outrageously discriminatory.

A few weeks ago the Kelvinator Corporation had to pay millions of dollars in back pay to women doing equal work with men.

In Leviticus 27:1-4 it is written,

> "When the Lord spoke unto Moses (a he), he said:...thy valuation shall be for the male from 20 years old even until 60 years old...50 shekels of silver,,, and if it be female, then thy valuation shall be 30 shekels."

Why is the Lord a HE"? Erasmus the the Dutch theologian was supposed to have said God is black, Blind and is a She. How does one prove otherwise?

Why are all the priests, Bishops, Cardinals and Popes males? Why do we say "Amen", and not "Ah women"? Or "sheros" instead of "heros"? Or "herstory" (her-story), instead of "history", (his-story)? Why do we sing "hymns" (hims) not hers"?

Why is the Equal Rights Amendment having such a hard time in being ratified with so many State attempts at rescinding? Maybe from 1776 to now there has been a concerted anti-female prejudice, which has culminated in the election of Ronald Reagan on his anti-ERA and abortion program? Is a "he" a "he" and a "she" a "she" politically and economically?

The screen writers and directors guild has such a discriminatory suit, because there are so few females directors or producers like Katherine Hepburn, Jane Fonda

or Lee Grant who are politically tarnished or tainted by threatened males.

The evident anti-Vietnam nationwide feeling and anti-nuclear stance shown in Jane Fonda's "Coming Home" and "China Syndrome", that won an Oscar for "Coming Home" has been followed by Jane Fonda's hilarious male v female movie "9 to 5" that is highly reccommended.

The March 27, 1981, lead, N.Y. Times Magazine article by Colette Dowling, entiteled "The Cinderella Syndrome" is a shocking, sliding backward anti-female discrimination that states, that 26 years later women are earning 5% even less than men. In 1955 women earned 63.9% and now they earn 59% of what men in similar positions earn.

When did a 'she' become a 'he" politically or economically? Have you read how hard it is for women to raise money for political offices, compared to men?

Women are not men and Viva la difference.

Marilyn French the feminist anti-male author of "The Womens Room", has recently written a Shakespearean critique called, "Shakespeare's Division of Experience". Marylin French says the anti-female feeling is not brought on by nature but by cultural programming controlled by men, based on gender, for political and religious power. Sex is used to control and possess.

Were our male chauvinistic Founding Fathers different? Not one woman signed the Declaration of Independence or the Constitution. When they wrote "he" they meant "he and it can not mean "she" unless it is amended under an Article V Amendment procedure, which has not happened as yet, and which will most likely not happen in the foreseeeable future with the anti-female fervor of the anti-ERA, anti-abortion election of Ronald Reagon to reinforce the past and continuing economic and political prejudice that Constitutionally confirms a "she" is not and has never been a "he".

NBC-TV popular talk-show host, Phil Donahue has a show on inequality of pay for women on Tuesday, April 14, 1981.

Theda Skocpol of Harvard University was denied tenure because of gender, and in an Editorial entitled "Sex and the Selfish Gene", N.Y. Times, 4/13/81, it is stated

> "the selfish gene is hard at work in Academe, which impels men to act on behalf of one's kin, to promote the survival of one's own kind. Colleges and universities are not of course taking any risk in ~~in~~ so consistently looking to men for their faculty - but they sure are perpetuating the status quo."

How many women have ever sat on the Supreme Court of the United States?

Although 25 percent of today's medical students are women, only 10 percent of the nation's 40,000 practicing physicians are women, but the reverse is true in Russia. Only 3.5 percent of women are full professors in medical school, and only 1.5 percent are department heads, No woman is a full dean in any of the 122 medical schools. A "she" is a "she" is a "she", to

paraphrase, Gertrude Stein - and not a he".

In the words of Charles Dickens' Mr. Scrooge, "Bah, Humbug", to all this horrible, historical, political distortion. It is not true a "she" is a "he".

Even the original Article I, Section 2, Clause 1, that specifically did not deny the women the right to vote that was not amended by the 132 year later, 1920, 19th Amendment, did not give the women the right to run for or hold the three elective offices of Rep-Resentative, Senator (as in this case) or President, and/or Vice President. The right to vote and to hold office are two separate constitutional rights, that still has not happened unless the Equal Rights Amendment is ratified, which does not seem likely now.

Under the 1971, 26th, 18 year old Right to Vote Amendment, no one, not even a "he" can run for Representative, for 7 more years until attaining the age of 25; or to run for Senator, for 12 more years until attaining

the age of 30; and running for President for 18 more years, until attaining the age of 35, and then, even though a citizen, can not run for President, unless "he" is a "natural born citizen" , which leaves out Henry Kissinger and F.D.R. Jr. who was born on Campobello Island, Canada, even though his father was the only four time President in the history of the United States.

Even though women were not specifically denied the right to vote, they could not vote, until the 19th Amendment rectified, not amended the situation.

Women were never specifically denied the right to run for or hold one of the three elective offices, and in case of the Senate, no women from 1888 to the 125 year later 1913, Direct Election of Senators, and beyond, was any woman ever "chosen by the legislature thereof" under the original Article I, Section 3, Clause 1. What longer historical proof is needed, which male gender has not changed by the 17th

Amendment?

PLAINTIFF PAYMENT

There should be Plaintiff Payment under the Alyeska Pipeline Service v Wilderness Soc. case, 421 U.S. 40, and other subsequent cases.

If Judge John D. Fauntleroy awarded $2 million in fees to 5 lawyers for 5 years work, in the District of Columbia Superior Court in winning the District's professional tax against physicians, lawyers, architects and other professionals, how much should I be awarded after more than 20 years of bringing suits on behalf of the constitution on the much bigger issues of apportionment, bigger than the Baker v Carr, Tennessee State first apportionment case, that could run into trillions of dollars from 1950 to 1990, if Section 2 of the 14th Amendment is not enforced, the "she v he" is not resolved after certiorari is granted and decided in favor of THE CONSTITUTION OF THE UNITED STATES OF AMERICA???

GRANT CERTIORARI NOW. SAVE TIME, MONEY AND TROUBLE. I have another similar suit in the Southern District Court of New York and another one in the Second Circuit Court of Appeals, in addition to this one in the Supreme Court, with three suits at all three levels of the federal judiciary at once, for the first time, and there will be more to come if I am not accorded my First Amendment rights to speak, write and be heard to uphold these simple to ascertain 100% truths that affects my constitutional right to vote for my constitutional gandered apportionment of Representatives, and Presidential Electors, and Senators, as New York is slated to lose 5 more Representatives in 1980, and Presidential Electors, when added to President Reagans, bludgeoning Budget on the severly suffering northeast, that will affect our national political and economic clout, that already has affected my being excised from my job, that has affected my health, that gives me standing to sue, because the Constitution belongs to the

people of the United States, and I am one of those knowledgeable, learned people who despite all the past set backs still believes that the civil manner through the courts instead of rebellion or crime in the street, should be the way to settle even these momentuous Constitutional issues, under the First Amendment freedoms, that should apply in the Courts, even more than in the streets. Right?

Respectfully submitted,

Victor Sharrow

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4/14/81

APPENDIX

Photocopying the legal sized, Second Circuit, 12/29/80, Sharrow v Holtzman, 80 Civ. 7731, decision, as I did the first time instead of retyping it, with possibility of errors, also does not show the overstamping on words, of the date and peculiar,

"N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court." [Raising the question - WHY NOT?]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-ninth day of December, one thousand nine hundred and eighty,

Present:
Hon. James L. Oakes
Hon. Thomas J. Meskill
Circuit Judges.
Hon. Henry R. Werker,
District Judge.

Victor Sharrow,
Appellant.
v.

Bess Myerson and Elizabeth Holtzman,
Appellees.

O R D E R

This appeal is from the dismissal of Mr. Sharrow's complaint by the United States District Court for the Southern District of New York, Robert J. Ward, Judge. Mr. Sharrow claims that the appellees, because they are women, are disqualified from running for or holding the office of United States Senator. It might appear that this suit, filed in August of 1980, is now moot for the primary and general elections have already been held and neither appellee has been elected to the United States Senate. However, we will assume that this controversy is not moot, for it is one 'capable of repetition, yet evading review.' See Storer v. Brown, 415 U.S. 724,737 n.8(1974); Moore v Ogilvie, 394 U.S. 814, 816 (1969). In addition, though 'the asserted harm is a 'general grievance' shared in substantially equal measure by all or a large class of citizens,' and appellant has failed to allege 'such a personal stake in the outcome

of the controversy as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf,' Warth v Seldin, 422 U.S. 490, 498-99 (;975), we will assume for purposes of this appeal that Mr. Sharrow has standing.

On the merits, however, we hold that appellant has failed to state a claim for relief under the United States Constitution. The Constitution does not command that women be disqualified from holding the office of Senator. Aticle I, section 3, clause 3, which provides

> No person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not when elected, be an Inhabitant of that State for which he shall be chosen.

does not establish a gender qualification for the office. Rather, the word 'he', when used to modify the word 'person', in common usage refers to both male and female persons. See Dickson v. Strickland, 114 Tex. 176, 265 S.W. 1012,1021 (1924);

State ex rel. Crow v. Hostetter, 137 Mo. 636, 39 S.W. 270 (1897). Thus, in construing statutes and the Constitution, the use of the word 'he' does not modify the meaning of the antecedent 'person', but instead is to be interpreted in a gender-neutral manner. See 1 U.S.C. #1; Adams v Storey, 1 F. Cas. 141, 145 (C.C.N.Y. 1817)(No.66); Stearns v VFW, 353 F. Supp. 473, 475-76 (D.D.C. 1972), modified on other grounds, 500 F. 2d 788 (D.C.Cir. 1979).

The United States Constitution is to be interpreted as guaranteeing basic rights and freedoms to all persons. Even if the Framers of the Constitution did not specifically consider the question whether women should be allowed to serve as Senators, the Nineteemth Amendment has effectively extinguished all gender-based limitations on eligibility. When there is no express prohibition based on gender, it is understood that all voters who meet the age, citizenship, and residence requirements

are eligible to hold office. Since ratification of the Nineteenth Amendment, women as well as men are voters, and they are therefore placed on the same basis as men with respect to eligibility for public office. See generally Breedlove v Suttles, 302 U.S. 277, 283 (1937); Graves v Eubank, 205 Ala. 174, 87 So. 587 (1921); Opinion of the Justices, 240 Mass. 601, 135 N.E. 173(1922). Therefore, the appellant has failed to allege a constitutional claim.

Judgement of the district court dismissing appellant's complaint is affirmed.

Signed: James L. Oakes
Thomas Meskill
Circuit Judges
Henry F. Werker
District Judge
(Judgement issued 1/20/81)

P.S. There is NO RESIDENCE requirement to run for Senator, under Art. I, Sec. 3, Cl.3. Robert F. Kennedy, a RESIDENT of Massachussetts, was elected Senator from New York because the Constitution only required that Kennedy be an INHABITANT, not even a N.Y. voter. Judge Oakes 24 did not even know.